IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.244 OF 2004

Shri.C.M. Talera.
...Petitioner.
Vs.
Talera Park Co.op.Hsg.Soc. Ltd. and ors.
...Respondent.

Mr.G.S. Godbole for the Petitioner.
Mr.S.M.Gorwadkar for the Respondent Nos.1 and 2.

CORAM : R.S. MOHITE,J.
DATED : 07/12/2005.

P.C.

1. By this petition, the petitioner impugns an order dated 7.8.2003 passed by the 4th Joint Civil Judge, S.D., Pune in Misc.Application No.22/1998 refusing to make a reference under Section 15 of the Contempt of Court's Act. It appears from the record that in a suit filed by the present petitioner initially against the present Respondent No.1, an injunction was obtained against the Respondent No.1 Society and members claiming through the said society from making construction on the suit property in excess of ground plus first floor in violation of Clause No. 13 of the sale deed dated 9.10.1986. The present Respondent No.2 admittedly was not party respondent to the said suit on the date when the injunction order was obtained. It is an admitted position that the petitioner sent a telegram to

Respondent Nos. 2 and 3 on 3.1.1998 informing them about the court's order. On perusal of the telegram, it appears that the text of the order was not incorporated in the said telegram. On receipt of this telegram, the Respondent No.2 applied for a certified copy of the order said to have been passed and obtained the same on 5.1.1998. On the same day, an application was made for initiating action under Section 15 of the Contempt of Court's Act. This application was dismissed by the impugned judgment and order. On perusal of the application made to the Trial Court for initiating a reference, it is clear that the application was vague. It is not specifically mentioned therein as to what construction was effected after the injunction order was passed. My attention was drawn to some admissions given by the Defendant No.2 in the cross examination of the plaintiff. The Defendant No.2 had admitted in the cross examination that he had done the work of plastering after 3.1.1998 and he had completed the work of construction after 7.2.1998. It appears that on 7.2.1998 the Respondent No.2 filed an appeal and obtained a stay against the injunction order and the stay was operating till 9.7.1999. From the material on record, it is not clear as to what construction was effected after the telegram was sent. In this view of the matter, I am not inclined to entertain the petition.

Petition is accordingly, dismissed.

2. It is made clear that if any application for amendment of plaint as regards the additional construction said to have been made is preferred the said application should be decided on its own merits without being influenced by the order passed in this writ petition.

(R. S. MOHITE, J.)